



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201417028

JAN 16 2014

Uniform Issue List: 408.03-00

T:EP:RA:TI

XXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXX

Legend:

Taxpayer A	=	XXXXXXXXXXXXXXXX
IRA X	=	XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
Financial Institution B	=	XXXXXXXXXXXX
Amount 1	=	XXXXXXXXXX
Individual C	=	XXXXXXXXXX
Trust Y	=	XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Individual D	=	XXXXXXXXXX
Individual E	=	XXXXXXXXXX

Dear XXXXXXXXX:

This is in response to your request dated January 30, 2013, as supplemented by correspondence dated December 10, 2013, from your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted on your behalf by your guardian, Individual E, under penalty of perjury in support of the ruling requested.

Taxpayer A represents that through the actions of Individual C, to whom he had given a Power of Attorney, he received a distribution from IRA X totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the revocation of Individual C's Power of Attorney and the subsequent actions taken by Individual C to determine whether Taxpayer A had the mental capacity to revoke and name a new Power of Attorney. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A maintained IRA X with Financial Institution B. In 2008, Taxpayer A gave his son, Individual C, Power of Attorney with respect to IRA X. Taxpayer A represents that Taxpayer A subsequently declined in mental capacity and submitted documentation from medical doctors indicating that as of November 11, 2011, he had memory loss and did not have the capacity to make decisions about financial matters.

On December 1, 2011, Individual C received notice that Taxpayer A was intending to make a change in his Power of Attorney and that Individual C would be notified and provided a copy of the new Power of Attorney. Individual C represents that he had concerns about Taxpayer A's mental capacity to understand and make such a change. On December 12, 2011, Taxpayer A represents that Individual C believed that Taxpayer A's assets were at risk of appropriation by another family member, and pursuant to the Power of Attorney, took a distribution of Amount 1 from IRA X to protect Taxpayer A's assets. Individual C immediately deposited Amount 1 in non-retirement Trust Y in Taxpayer A's name.

On December 13, 2011, Individual C received notification that Taxpayer A had executed a new Power of Attorney dated December 2, 2011, replacing Individual C with Individual D. Taxpayer A represents that Individual C filed a petition with a court to determine Taxpayer A's incapacity and to request appointment of a professional guardian. On May 8, 2012, Taxpayer A was found to be incapacitated due to dementia. On May 10, 2012, after the 60-day rollover period had expired, Individual E was appointed as guardian of Taxpayer A.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall

be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) of the Code do not apply to any amount required to be distributed under section 408(a)(6) of the Code.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement

pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A are consistent with his assertion that Individual C's failure to accomplish a timely rollover on his behalf was caused by the revocation of Individual C's Power of Attorney and Individual C's subsequent actions to determine whether Taxpayer A had the mental capacity to revoke and name a new Power of Attorney.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described in this ruling under the provisions of any other section of either the Code or regulations which may be applicable.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact XXXXXXXXXX XXXXX (ID XXXXXXXXX) at (XXX) XXXXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose

cc: XXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXX